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12 Attorneys for Plaintiffs,  
13 SONY BMG MUSIC ENTERTAINMENT;  
14 and UMG RECORDINGS, INC.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SONY BMG MUSIC ENTERTAINMENT, a  
Delaware general partnership; and UMG  
RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

v.

TREVOR SPIETH AKA TREVOR RUNNELS,  
Defendant.

CASE NO. 3:07-CV-04855-SI

Honorable Susan Illston

***EX PARTE APPLICATION TO CONTINUE  
CASE MANAGEMENT CONFERENCE  
AND EXTEND TIME TO SERVE  
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference  
2 currently set for April 18, 2008 at 2:00 p.m. to August 15, 2008. Plaintiffs further request, pursuant  
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an  
4 additional 90 days – until July 16, 2008 – to serve Defendant with the Summons and Complaint.  
5 Plaintiffs request the extensions of time sought herein because they have not yet been able to locate  
6 Defendant Trevor Spieth (“Defendant”) and serve him with process. In support of their request,  
7 Plaintiffs state as follows:

8 1. Plaintiffs filed their initial Complaint for Copyright Infringement against a  
9 John Doe Defendant on September 20, 2007. Plaintiffs did not have sufficient identifying  
10 information to name the Doe defendant individually in the Complaint, but were able to identify the  
11 Doe by an Internet Protocol address assigned by a third-party Internet Service Provider (“ISP”). In  
12 order to determine the Doe defendant’s true name and identity, Plaintiffs filed their *Ex Parte*  
13 Application for Leave to Take Immediate Discovery, requesting that the Court enter an Order  
14 allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

15 2. The Court entered an Order for Leave to take Immediate Discovery on  
16 October 10, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On  
17 November 16, 2007, the ISP responded to Plaintiffs’ subpoena, identifying the individual associated  
18 with the Internet Protocol address. After Plaintiffs contacted this individual, she in turn identified  
19 the Defendant, Trevor Spieth, as the actual infringer of Plaintiffs’ copyrights. Plaintiffs then  
20 investigated this claim and believe Mr. Speith to be the actual infringer. Plaintiffs thus contacted  
21 Mr. Spieth by telephone and the parties discussed settlement, but no settlement was ever reached.

22 3. Accordingly, on March 24, 2008, Plaintiffs filed the First Amended  
23 Complaint naming Trevor Spieth aka Trevor Runnels as the individual Defendant. Plaintiffs then  
24 engaged a process server.

25 4. Plaintiffs conducted database research to determine Defendant’s address.  
26 However, when Plaintiffs attempted service at this address, they were informed that Defendant no  
27 longer resides there. Plaintiffs have now contracted for a further investigation to determine where  
28 Defendant can be found and served with process.

1           5. Since Defendant has not yet been served, there is no need for a case  
2 management conference at this time, and Plaintiffs respectfully request that the Court continue the  
3 case management conference from April 18, 2008 to August 15, 2008, or such other date as  
4 conveniences the Court. The case management conference was continued twice previously while  
5 this case was still in the Doe stage, once by the Court of its own accord (for 11 days) and once by the  
6 Court upon Plaintiffs' request (for 94 days).

7           6. The current deadline for service of process is April 17, 2008. Plaintiffs  
8 request an additional 90 days – until July 16, 2008 – to effectuate service, so that Plaintiffs can  
9 continue to attempt to locate Defendant and serve him with process. The court granted Plaintiffs'  
10 previous request for a 90-day service extension while this case was still in the Doe stage.

11           7. Plaintiffs submit that their efforts to contact Defendant and resolve the case  
12 before naming Defendant in the lawsuit constitute good cause under Rule 4(m) for any delay in  
13 perfecting service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating  
14 good cause standard for service extensions). Moreover, unlike a traditional case in which the  
15 defendant is known by name and efforts to serve can begin immediately after filing the complaint, in  
16 this case Plaintiffs first had to file a Doe lawsuit and obtain the identity of the infringer through the  
17 subpoena to the ISP, and then conduct a further investigation when that individual claimed she was  
18 not the actual infringer. This Court has discretion to enlarge the time to serve even where there is no  
19 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

20           8. Because the copyright infringements here occurred in 2007, the three-year  
21 limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus  
22 be no prejudice to the Defendant from any delay in serving the Complaint.

1                   9. Plaintiffs will provide Defendant with a copy of this request and any Order  
2 concerning this request when service of process occurs.

3  
4 Dated: April 9, 2008

HOLME ROBERTS & OWEN LLP

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6 By: /s/ Matthew Franklin Jaksa  
7 MATTHEW FRANKLIN JAKSA  
8 Attorney for Plaintiffs  
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10                   **ORDER**

11                   Good cause having been shown:

12                   **IT IS ORDERED** that the case management conference currently set for April 18, 2008, at  
13 2:00 p.m., be continued to August 15, 2008.

14                   **IT IS FURTHER ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules  
15 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to  
16 July 16, 2008.

17  
18 Dated: \_\_\_\_\_

19 By: \_\_\_\_\_  
20 Honorable Susan Illston  
21 United States District Judge  
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